



February 26, 2023

SUMMARY OF BILL AS AMENDED (004441): Enacts the *Transportation Modernization Act of 2023* (Act).

Defines a “progressive design builder” (PDB) as a design builder that is able to provide pre-construction services during the preliminary design and development phase of a transportation project, and is able to complete the final design and construct the project if the Department of Transportation (TDOT) and the design-builder agree to a guaranteed maximum price.

Defines a “performance-based asset maintenance contract” (PBAM) as a contract that provides for managing and performing the inspection, reconstruction, repair, or maintenance of contracted highway facility components, where the contract sets specific performance standards, rather than prescriptive work tasks and deadlines. Such contracts may also include third-party damage repair and claim management services, and may also provide for design, right-of-way acquisition, regulatory permit review and approvals, or utility relocation activities.

Authorizes TDOT to enter into agreements with PDBs and award PBAM contracts.

Removes limitations preventing TDOT into initiating more than 15 design-build contracts in any one fiscal year, if the contract has a total estimated contract amount of less than \$1,000,000. Removes limitations preventing TDOT into initiating more than five design-build contracts in any one fiscal year, if the contract has a total estimated contract amount in excess of \$1,000,000.

Removes limitation preventing the cumulative cost of contract manager/general contractor (CM/GC) projects awarded in a single year from exceeding 25 percent of the total amount of construction contract awards made in the previous fiscal year, unless otherwise approved by the General Assembly.

Reduces, from eight to five, the total number of members on a TDOT construction CM/GC selection committee. Reduces, from five to three, the number of TDOT employee-members on any such committee. Reduces, from three to two, the number of members who are not TDOT employees on any such committee.

Establishes the Transportation Modernization Fund (TMF). Authorizes the TMF to be used for the following purposes:

- To fund strategic transportation initiatives, including, but not limited to, congestion mitigation, rural interstate widening, and the accelerated delivery of

strategic transportation improvements over and above the transportation improvements program generally supported by the State Highway Fund (HF);

- To respond to a transportation system failure, an imminent threat of a failure, or other emergency as provided in Tenn. Code Ann. § 54-1-135, which use may be eligible for reimbursement from the federal government; and
- Another purpose for which the HF may be lawfully used.

Effective July 1, 2023, and subject to appropriation in the General Appropriations Act, directs \$3,000,000,000 to the TMF, to be divided equally in four parts, or \$750,000,000, and allocated to each of the four TDOT regions. Additionally, and effective on July 1, 2023, directs \$300,000,000 to the TMF, to be distributed to local governments as grants, as determined by the Commissioner of the TDOT.

Establishes that, in addition to the appropriations above, the TMF may consist of other moneys received by the TDOT for the purposes of the fund that are not otherwise allocated to the TDOT by law. Prohibits any funds that carryover from reverting to the General Fund. Requires the TDOT to, by January 1, 2024, and every January 1 thereafter, submit a report on the status of projects supported by the TMF.

Establishes the Transportation Modernization Board (Board) consisting of five voting members, to which TDOT is required to provide administrative support.

Authorizes the Department of General Services (DGS), with approval of the Governor and Attorney General and Reporter, to sell, lease, or convey any interest in surplus real property if the property was acquired by or for the use of TDOT for right-of-way, if the value of such property does not exceed \$250,000, rather than currently established \$75,000; however, property with a value in excess of \$250,000 may be exempt from such threshold, upon approval by the State Building Commission.

Authorizes the TDOT to develop user fee facility projects and operate user fee facilities. Authorizes the TDOT to enter into a contractual agreement with a local governmental entity, other public entity, or a private entity that provides for the development, construction, reconstruction, financing, acquisition, maintenance, or operation of a user fee facility, or a combination thereof. Authorizes private entities to charge user fees for access to such facilities.

Deletes and replaces the State Tollway Fund with the User Fee Fund (UFF). Establishes various sources of revenue to the UFF, including, but not limited to, user fee revenue and state appropriations. Authorizes the TDOT to expend funds from the UFF, TMF, and HF, other funds, grants, or loans received from or made available by the federal government or another government agency.

Establishes that it is the intent of the General Assembly to:

- Authorize user fees as an additional and alternative method for funding or financing the development and operation of highways and appurtenant facilities or other transportation-related facilities.

- Limit the operation of user fee facilities to new facilities opened on or after July 1, 2023, and to existing facilities where one or more new vehicle lanes is added to the facility on or after July 1, 2023.

Explicitly prohibits imposition of user fees on existing transportation facilities where such imposition would result in a reduction in the number of lanes available for use without payment of a user fee.

Establishes that it is a civil violation for the operator of a vehicle to drive through a user fee facility without payment of the applicable user fee. Requires the TDOT to place signs on, or in advance of, a user fee facility. Requires TDOT or a contractor to provide a written notice of nonpayment to any applicable vehicle owner. Authorizes TDOT or TDOT's contractor to use an open road user fee system to monitor the use of a user fee system and collect payment of user fees.

Beginning January 1, 2024, the following registration fees specific to electric vehicles, and in addition to all other motor vehicle registration fees prescribed by law, are payable to the Department of Revenue (DOR):

- For all-electric vehicles:
 - On or after January 1, 2024 and prior to January 1, 2026, \$200;
 - On or after January 1, 2026 and prior to January 1, 2027, \$274;
 - On or after January 1, 2027 and each subsequent year, the \$274 fee must be adjusted by an amount each year to reflect the effect of annual inflation or deflation. Limits the maximum such annual increase to three percent.
- For hybrid electric vehicles and plug-in hybrid electric vehicles, \$100.

Requires that proceeds from these increases in registration fees be apportioned as follows:

- 63.4 percent to the HF;
- 11.8 percent to municipalities;
- 22 percent to counties; and
- 2.8 percent to the General Fund (GF).

Requires the DOR, on January 1, 2025, and on January 1 of each subsequent year, to adjust the amount of the aforementioned registration fees to reflect annual inflation or deflation for the state's cost of living. Requires the DOR to publish each adjusted registration fee amount on its website.

Requires, beginning January 1, 2026, if the federal government implements any taxes or fees on all-electric vehicles under Title 26 of the United States Code and allocates those taxes or fees to the federal Highway Trust Fund, then the aforementioned additional registration fee for all-electric vehicles be adjusted so as to account for the federal tax or fee. Prevents any such adjustment from lowering the registration fee for all-electric vehicles below \$200. Adversely, if the federal government decreases any or all taxes or fees on all-electric vehicles, the additional registration fee must be increased by an amount equal to the amount of the decrease by the federal government.

FISCAL IMPACT OF BILL AS AMENDED:

**Increase State Revenue – \$233,100/FY23-24/General Fund
\$413,600/FY24-25 General Fund
\$447,800/FY25-26/General Fund
\$475,100/FY26-27 and Subsequent Years/General Fund**

**Net Impact - \$3,148,100/FY23-24/Highway Fund
Net Impact - \$6,984,200/FY24-25/Highway Fund
Net Impact - \$7,509,600/FY25-26/Highway Fund
Net Impact - \$8,126,600/FY26-27 and Subsequent Years/Highway Fund**

\$3,300,000,000/FY23-24/Transportation Modernization Fund

**Increase State Expenditures –
\$3,300,000,000/FY23-24/General Fund
Exceeds \$300,000,000/FY23-24/Transportation Modernization Fund**

**Increase Local Revenue - \$302,813,300/FY23-24
\$4,992,300/FY24-25
\$5,405,700/FY25-26
\$5,734,600/FY26-27 and Subsequent Years**

Other Fiscal Impact - This legislation is estimated to result in numerous new contractual agreements between the Department of Transportation and various entities, both governmental and private, for design, construction, and maintenance of user fee facilities statewide. This legislation is estimated to result in the sale or lease of state property to various entities, governmental and private, upon which such user facilities will be built. The timing and amounts of these various transactions are based upon numerous unknown variables and cannot be estimated with reasonable certainty. Additionally, subsequent economic and fiscal impacts associated with construction and operation of such facilities are unknown and cannot be determined with reasonable certainty.

There will be subsequent expenditures out of the Transportation Modernization Fund for the purposes outlined in this legislation. The timing and specific amounts of such disbursements cannot be estimated with reasonable certainty. Additionally, the timing and amount of local expenditures for local transportation projects from the \$300,000,000 grant is unknown and cannot be determined with reasonable certainty.

The Governor's proposed budget for FY23-24, on page B-332, recognizes a one-time increase in state expenditures from the General Fund of \$3,300,000,000.

Assumptions for the bill as amended:

- This legislation is estimated to result in numerous new contractual agreements between the TDOT and various entities, both governmental and private, for design, construction, and maintenance of user fee facilities statewide. This legislation is estimated to result in the sale or lease of state property to various entities, governmental and private, upon which such user facilities will be built. The timing and amounts of these various transactions are based upon numerous unknown variables and cannot be estimated with reasonable certainty.
- Additionally, subsequent economic and fiscal impacts associated with construction and operation of such facilities are unknown and cannot be determined with reasonable certainty.
- This legislation establishes the Board, which is to be administratively attached to the TDOT. This legislation does not provide compensation nor reimbursement for members of the Board and TDOT will provide all administrative functions within existing resources; therefore, there is no estimated fiscal impact to the TDOT.
- The proposed language establishes the TMF, being comprised of funds appropriated by the General Appropriations Act, plus an additional sum distributed to local governments as grants, as determined by the Commissioner of TDOT.
- Per the Governor's proposed FY23-24 budget document, a one-time appropriation from the GF of \$3,000,000,000 will be made to the TMF in FY23-24. In addition, a one-time appropriation of \$300,000,000 will be made from the GF to the TMF in FY23-24; such allocation will be distributed to counties to support local transportation needs through the State Aid Program.
- In FY23-24, there will be an increase in state expenditures from the GF and an equivalent increase in revenue to the TMF of \$3,300,000,000, and an increase in expenditures from the TMF and an equivalent increase in local revenue of \$300,000,000.
- There will be an unknown amount of expenditures incurred out of the TMF for the purposes outlined in this legislation. The timing and amount of such expenditures cannot be known with reasonable certainty. However, such distributions are to be divided equally for projects within the four regions of TDOT.
- Additionally, the timing and amount of local expenditures for local transportation projects from the \$300,000,000 grant is unknown and cannot be determined with reasonable certainty.
- Based on information provided by the TDOT, non-employee members on a CM/GC selection committee are not compensated for their service and employee members are not compensated beyond their normal salary; therefore, no reduction in state expenditures are estimated due to a reduction in committee membership.
- Currently, only all-electric vehicles are required to pay a registration fee beyond all other registration fees, at an annual cost of \$100.
- This legislation will increase the \$100 registration fee for all-electric vehicles to the following amounts for the specified date range:
 - \$200, representing a \$100 increase on January 1, 2024 – December 31, 2025;
 - \$274, representing a \$174 increase on January 1, 2026 – December 31, 2026.
- This legislation will require hybrid and plug-in vehicles to begin paying an annual registration fee of \$100.

- This increase will occur on January 1, 2024, or in FY23-24; therefore, resulting in a half-year's impact in FY23-24.
- In addition, every January 1 thereafter, beginning on or after January 1, 2027, the cost of such registration shall be adjusted to reflect annual inflation or deflation for cost of living.
- For purposes of this fiscal note, it is assumed that inflation or deflation will stay constant into perpetuity.
- Beginning January 1, 2026, if the federal government implements any taxes or fees on all-electric vehicles under Title 26 of the United States Code and allocates those taxes or fees to the federal Highway Trust Fund, then the aforementioned additional registration fee for all-electric vehicles must be adjusted so as to account for the federal tax or fee. Prevents any such adjustment from lowering the registration fee for all-electric vehicles below \$200. Adversely, if the federal government decreases any or all taxes or fees on all-electric vehicles
- For purposes of this fiscal note, it is assumed that there will be no adjustment to such registration fees to reflect federal taxes or fees.
- It is further assumed that there will be less registrations for hybrid/plug-in vehicles and more for all-electric vehicles in future years.
- The following are the estimated total increases in state revenue by fiscal years:
 - FY23-24: \$6,195,000;
 - FY24-25: \$12,390,000;
 - FY25-26: \$13,363,100;
 - FY26-27 and subsequent years: \$14,336,200.
- The calculations for the preceding revenue estimates can be attained from the Fiscal Review Committee upon request.
- The proposed legislation requires that proceeds from these new registration fees be apportioned as follows:
 - 63.4 percent to the HF;
 - 11.8 percent to municipalities;
 - 22 percent counties; and
 - 2.8 percent to the GF.
- In FY23-24, the increase in registration fee revenue of \$6,195,000 will be allocated as follows:
 - \$3,927,630 to the HF ($\$6,195,000 \times 63.4\%$);
 - \$2,093,910 to local governments [$\$6,195,000 \times (11.8\% + 22\%)$]; and
 - \$173,460 to the GF ($\$6,195,000 \times 2.8\%$).
- In FY24-25, the increase in registration fee revenue of \$12,390,000 will be allocated as follows:
 - \$7,855,260 to the HF ($\$12,390,000 \times 63.4\%$);
 - \$4,187,820 to local governments [$\$12,390,000 \times (11.8\% + 22\%)$]; and
 - \$346,920 to the GF ($\$12,390,000 \times 2.8\%$).
- In FY25-26, the increase in registration fee revenue of \$13,363,100 will be allocated as follows:
 - \$8,472,205 to the HF ($\$13,363,100 \times 63.4\%$);
 - \$4,516,728 to local governments [$\$13,363,100 \times (11.8\% + 22\%)$]; and
 - \$374,167 to the GF ($\$13,363,100 \times 2.8\%$).

- In FY26-27 and subsequent years, the increase in registration fee revenue of \$14,336,200 will be allocated as follows:
 - \$9,089,151 to the HF ($\$14,336,200 \times 63.4\%$);
 - \$4,845,636 to local governments [$\$14,336,200 \times (11.8\% + 22\%)$]; and
 - \$401,413 to the GF ($\$14,336,200 \times 2.8\%$).
- The proposed allocation of funds will also apply to the currently imposed \$100 registration fee on electric vehicles. Pursuant to Tenn. Code Ann. § 55-6-107(e), all electric vehicle registration fee revenue is currently allocated to the HF under the *IMPROVE Act* provisions. Total revenue from the \$100 fee that would, under current law, be allocated to the HF is estimated to be \$2,130,000 ($21,300 \times \100) in FY23-24, \$2,380,000 [$(21,300 \times \$100 \times 50\%) + (26,300 \times \$100 \times 50\%)$] in FY24-25, and \$2,630,000 ($26,300 \times \100) in FY25-26 and subsequent years. The allocation of such revenue as a result of this legislation will be:
 - In FY23-24:
 - \$1,350,420 to the HF ($\$2,130,000 \times 63.4\%$);
 - \$719,940 to local governments [$\$2,130,000 \times (11.8\% + 22\%)$]; and
 - \$59,640 to the GF ($\$2,130,000 \times 2.8\%$).
 - In FY24-25:
 - \$1,508,920 to the HF ($\$2,380,000 \times 63.4\%$);
 - \$804,440 to local governments [$\$2,380,000 \times (11.8\% + 22\%)$]; and
 - \$66,640 to the GF ($\$2,380,000 \times 2.8\%$).
 - In FY25-26 and subsequent years:
 - \$1,667,420 to the HF ($\$2,630,000 \times 63.4\%$);
 - \$888,940 to local governments [$\$2,630,000 \times (11.8\% + 22\%)$]; and
 - \$73,640 to the GF ($\$2,630,000 \times 2.8\%$).

Total Impacts

- In FY23-24:
 - There will be a total increase in state revenue to the GF of \$233,100 ($\$173,460 + \$59,640$).
 - There will be a net increase in state revenue to the HF of \$3,148,050 ($\$3,927,630 + \$1,350,420 - \$2,130,000$).
 - There will be an increase in state expenditures from the GF of \$3,300,000,000.
 - There will be an increase in state revenue to the TMF of \$3,300,000,000.
 - There will be an increase in state expenditures from the TMF exceeding \$300,000,000.
 - There will be a total increase in local revenue of \$302,813,250 ($\$300,000,000 + \$2,093,310 + \$719,940$).
- In FY24-25:
 - There will be a total increase in state revenue to the GF of \$413,560 ($\$346,920 + \$66,640$).
 - There will be a net increase in state revenue to the HF of \$6,984,180 ($\$7,855,260 + \$1,508,920 - \$2,380,000$).

- There will be a total increase in local revenue of \$4,992,260 (\$4,187,820 + \$804,440).
- In FY25-26:
 - There will be a total increase in state revenue to the GF of \$447,807 (\$374,167 + \$73,640).
 - There will be a net increase in state revenue to the HF of \$7,509,625 (\$8,472,205 + \$1,667,420 - \$2,630,000).
 - There will be a total increase in local revenue of \$4,405,668 (\$4,516,728 + \$888,940).
- In FY26-27 and subsequent years:
 - There will be a total increase in state revenue to the GF of \$475,053 (\$401,413 + \$73,640).
 - There will be a net increase in state revenue to the HF of \$8,126,571 (\$9,089,151 + \$1,667,420 - \$2,630,000).
 - There will be a total increase in local revenue of \$5,734,576 (\$4,845,636 + \$888,940).
- Other:
 - There will be subsequent increases in state and local revenue and expenditures, timing and extent of which cannot be determined with reasonable certainty.
 - The Governor's proposed budget for FY23-24, on page B-332, recognizes a one-time increase in state expenditures from the GF of \$3,300,000,000.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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